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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------|------------------|
| 10/762,738 | 01/22/2004 | Francis S. Smidler | 739/40601/401 | 5616 |
| 279 7590 02/10/2006 Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd. 105 West Adams Street Suite 3600 Chicago, IL 60603 | | | EXAMINER GORDON, STEPHEN T | |
| | | | ART UNIT 3612 | PAPER NUMBER |
| DATE MAILED: 02/10/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/762,738 | Applicant(s) SMIDLER, FRANCIS S. | |
| | Examiner Stephen Gordon | Art Unit 3612 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-12, 21-31 and 33-37 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 13-20 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2004 and 12 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3 and 13-20, as newly amended, are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz '047.

Katz teaches a trailer sidewall construction including a panel with skins 28,32 and a core member 30, a bottom rail 50, and a base rail 34. The rails provide vertical separation as broadly claimed.

Katz fails to specifically teach that the bottom rail extends generally from the front end of the trailer to the rear end as broadly claimed.

Element 50, readable on the bottom rail, is associated with an edge of the floor. While the reference does not specifically teach that the floor assembly including element 50 extends generally the length of the trailer, such is typically the case. Nevertheless, in an effort to expedite prosecution, assuming the floor assembly along with floor component 50 does not extend the full length of the trailer, in order to utilize all available space of the trailer for supporting cargo, it would have been obvious to one of ordinary skill in the art to extend the floor assembly including element 50 from the front to the rear of the trailer in view of known art practices.

Newly amended claim 1, note the base rail is generally vertical, and each element is deemed to define upper and lower portions as broadly claimed. Additionally, noting

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figure 2, an *outer* (e.g. external) surface of the base rail as broadly claimed *faces* an inner skin of the panel as broadly claimed. Note the claim does not require contact with the inner skin per se. The device is clearly configured such that an inner portion of the base rail forms part of the boundary of the trailer interior as broadly claimed – note surface with the label “36” in figure 2 etc.

Claims 3 and 17, the device is deemed configured as broadly claimed.

Claims 13 and 16, while the specific recited dimensions are not taught by Katz, such dimensions are within normal ranges employed for such elements. The dimensions as applied to a trailer would be driven by design requirements such as desired strength of components etc. Specific recitation of exact dimensions in this case then would not constitute a patentably distinct departure from the teachings of Katz.

Claim 14, the device as modified above would be configured as broadly claimed.

Claim 15, Katz teaches that the portion of rail 34 that extends from the floor 48 is of a height of 18-24 inches – see section 1, lines 43-48. Looking at the overall height and relative dimensions of the rail 34 in figure 2, if the described portion of the scuff plate/rail is 18-24 inches high, an overall scuff plate/base rail 34 height of 22 inches would clearly be included in this range.

Claim 18, while the specific recited material of aluminum for the base rail is not taught by Katz, such material is a common material employed in the art for such elements.

The use of aluminum as applied to trailer components would be driven by design requirements such as desired strength/weight ratios of components etc. Specific

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recitation of aluminum for the rail material in this case then would not constitute a patentably distinct departure from the teachings of Katz.

Claim 19, multiple panels are taught, and the interface of those panels would define a joint as broadly claimed.

Claim 20, the base rail is deemed inset at 40 as broadly claimed.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. New claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katz '047 in view of Abbot et al '279.

Katz '047 renders obvious all of the claimed features as discussed above regarding claim 1 but fails to teach that the core 30+ defines a compressible nonmetal material – note the Katz core defines a metal hat section core sandwiched between metal sheet skins.

Abbot et al teaches a composite panel for use with a trailer side wall defining inner and outer skins and a compressible nonmetal core (note element 30 of Abbot et al).

In order to reduce weight and thereby increase fuel efficiency, it would have been obvious to one of ordinary skill in the art to replace the metal core members of Katz with compressible nonmetal core material in view of the teachings of Abbot et al.

5. Claims 4-12, 21-31, and 33-37 are allowed.

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6. Applicant's arguments filed 11-29-05 with regard to the claims presently rejected under Katz have been fully considered but they are not persuasive.

While it appears in the newly amended instant claim 1 that applicant is beginning to move away from the teachings of Katz and toward potentially patentably subject matter, the added claim language is still deemed broad enough to read on the Katz reference as noted above. Specifically, the language relating to an outer surface of the baserail facing an inner surface of the base rail is deemed sufficiently broad that it is anticipated by Katz. To the extent that the rightmost exterior surface of baserail 34 of Katz as viewed in figure 2 would define an "outer"/exterior surface of the element 34, it is deemed fairly readable on an outer surface as such. Moreover, while such surface is not in *contact* with inner skin 32, it clearly *facing* the inner skin as newly broadly recited. Moreover, as noted above, the elements of Katz '047 are clearly configured such that at least part of the upper portion of the baserail 34 of Katz forms part of a boundary of an interior of the trailer – see figure 2.

7. Regarding applicant's arguments with respect toward rejected claim 32 and the Katz reference, such arguments have been considered but are moot in view of the newly presented ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Gordon
Primary Examiner
Art Unit 3612

stg